IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9454 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARASWATI EDUCATION TRUST THRO.MANAGING TRUSTEE

Versus

DISTRICT EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 9454 of 2002

MR JAL SOLI UNWALA for Petitioner No. 1

Ms.Manisha Shah,AGP for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 10/10/2002

ORAL JUDGEMENT

Rule. Ms.Manisha Shah, Ld.AGP appearing of respondent Nos 1 to 3 waives service of rule. With the

consent of parties matter is taken up for final hearing today.

2. The present petition is preferred by the petitioner against the order, dated 14.6.02, passed by the Commissioner, Madhyanna Bhojan whereby the permission to open XIth standard (General stream) in Hindi is declined and the petitioner has also challenged the order passed by the State Govt dated 6.8.02 whereby the appeal against the aforesaid order is dismissed.

3. In my view it is not necessary for this court to examine other aspects of the case since one of the contentions raised on behalf of the petitioner regarding non-speaking order passed by the appellate authority has considerable force. The perusal of the order, dated 6.8.02 passed by the appellate authority shows that no reasons, whatsoever, have been given, and therefore, the order can be said to be a non-speaking order.

4. The Ld.AGP appearing on behalf of the respondents submitted that when the order of the first authority is with recording reasons, it is not necessary for the State Govt while exercising appellate powers to again record the reasons for dismissing the appeal. The aforesaid contention raised on behalf of respondents deserves to be rejected on the face of it in as much as it is well settled that the powers of the appellate authority are in the nature of quasi judicial authority. When the quasi judicial authority of the State Govt exercises the powers, what is minimum expected is that it should consider the contentions, it may not deal with each and every contention, but the main contention should be considered, and in any case, reasons should be recorded for rejecting the contentions or rather for dismissing the appeal. If the reasons are not recorded by the appellate authority the order would be rendered non-speaking order and such principles are embodied in view of principles of natural justice because the party whose case is rejected must know the reasons on the basis of which the case is rejected. Secondly, the higher authority can consider as to whether the reasons which have weighed with the appellate authority are legal and valid or does or does it not call for interference. In my view, the perusal of the order, dated 6.8.02 passed by the State Govt exercising appellate powers does not meet with any of the minimum requirements for the purpose of passing the order and therefore the order passed by the State Govt deserves to be quashed and set aside only on the ground that the same is not a speaking order.

5. In view of the above discussion, the order dated 6.8.02 passed by the State Govt at annexure "L" is quashed and set aside and the appeal preferred by the petitioner is restored to the file of the State Govt and the State Govt is directed to give opportunity of hearing to the petitioner and render decision in accordance with law within a period of two months from the date of receipt of writ of this court.

6. The petition is allowed to the aforesaid extent and rule is made absolute accordingly. There shall be no order as to costs. DS permitted.

10.10.02 (JAYANT PATEL,J)